

Attorneys for Plaintiff, Van Phillips

VAN PHILLIPS, an individual
Plaintiff,

Case No. C073305 SI

-V-

JOHN D. DIAMOND, DIAMOND
PHILLIPS, INCORPORATED, an Illinois
Corporation, AND DOES 1 THROUGH
50, INCLUSIVE

VAN PHILLIPS' REPLY TO DEFENDANTS' COUNTER-CLAIM

Defendants.

JOHN D. DIAMOND; DIAMOND
PHILLIPS INC., an Illinois corporation,

Counter-Claimants

v.

VAN L. PHILLIPS, an individual.

Counter-Defendant

VAN PHILLIPS, an individual.

Cross-Claimant

1 v.)
 2)
 3 JOHN D. DIAMOND; DIAMOND)
 4 PHILLIPS, INC. an Illinois corporation,)
 5 Cross-Defendants)

6 Plaintiff Van Phillips submits this Reply to Defendants' Counter-Claim for Breach of
 7 Contract, Common Count, Common Count in Quantum Meruit, and Unjust Enrichment as
 8 follows:

- 9 1. Plaintiff admits, on information and belief, the allegations set forth in
 10 paragraphs 1, 2, and 3 of the Counter-Claim.
- 11 2. Plaintiff denies the allegations set forth in paragraph 4 of the Counter-Claim.
- 12 3. Plaintiff admits the allegations in paragraph 5, except that plaintiff was not
 13 aware that he was being charged a markup on products or materials provided by DPI.
- 14 4. Plaintiff denies the entirety of the allegations in paragraph 6 of the Counter-
 15 Claim.
- 16 5. Plaintiff denies the allegations in paragraph 7 of the Counter-Claim
- 17 6. Plaintiff admits the allegations in paragraph 8 of the Counter-Claim except that
 18 Sherwood Forest and White Deer Mountain are one in the same project.
- 19 7. Plaintiff denies the allegations in paragraph 9 of the Counter-Claim.
- 20 8. As for paragraph 10, plaintiff admits that counter-claimants purchased the
 21 windows and doors in 2004 and that plaintiff paid for these materials without complaint at the
 22 time because plaintiff was unaware that he was being charged a mark-up. Plaintiff further
 23 admits that counter-claimants purchased additional doors and windows for the Green House,
 24 Tea House and the Farm House. Plaintiff denies that doors and windows were ever purchased
 25
 26
 27

1 for the Sausalito Main House. Plaintiff denies the remainder of the allegations in paragraph 10.

2 9. Plaintiff admits the allegations in paragraph 11, except that plaintiff denies that
3 he refused to accept delivery of the windows and doors. Rather, plaintiff made arrangements to
4 have the doors and windows stored.

5 10. In responding to paragraph 12 of the Counter-Claim, plaintiff incorporates
6 herein by reference his response to paragraphs 1 through 11 which are set forth in the numbered
7 paragraphs 1 through 9 above.

8 11. Plaintiff denies the allegations as set forth in paragraph 13.

9 12. Plaintiff denies the allegations as set forth in paragraph 14.

10 13. Plaintiff denies the allegations as set forth in paragraph 15.

11 14. Plaintiff denies the allegations as set forth in paragraph 16.

12 15. In responding to paragraph 17 of the Counter-Claim, plaintiff incorporates
13 herein by reference his response to paragraphs 1 through 16 which are set forth in the numbered
14 paragraphs 1 through 14 above.

15 16. Plaintiff denies paragraphs 18 and 19 of the Counter-Claim.

16 17. In responding to paragraph 20 of the Counter-Claim, plaintiff incorporates
17 herein by reference his response to paragraphs 1 through 16 which are set forth in the numbered
18 paragraphs 1 through 14 above.

19 18. Plaintiff denies paragraphs 21, 22 and 23 of the Counter-Claim.

20 19. In responding to paragraph 24 of the counter-claim, plaintiff incorporates herein
21 by reference his response to paragraphs 1 through 16 which are set forth in the numbered
22 paragraphs 1 through 14 above.

20. Plaintiff denies paragraphs 25, 26 and 27 of the Counter-Claim.

AFFIRMATIVE DEFENSES

1. The Counter-Claim, and all causes of action therein, fail to state facts sufficient to state a cause of action;
2. The Counter-Claim, and all causes of action therein, are barred by the statute of limitations and the statute of frauds;
3. The Counter-Claim, and all causes of action therein, are barred by unclean hands;
4. The Counter-Claim, and all causes of action therein, are barred by waiver;
5. The Counter-Claim, and all causes of action therein, are barred by laches;
6. The Counter-Claim, and all causes of action therein, are barred by the doctrine of equitable estoppel;
7. The Counter-Claim, and all causes of action therein, are barred because plaintiff prevented defendants from performing on the contract;
8. The Counter-Claim, and all causes of action therein, are barred by novation
9. The Counter-Claim, and all causes of action therein, are barred by accord and satisfaction;
10. The Counter-Claim, and all causes of action therein, are barred by waiver;
11. The Counter-Claim, and all causes of action therein, are barred by merger.
12. The Counter-Claim, and all causes of action therein, are barred by fraud in the inducement.

Dated: November 7, 2007

John W. Howard
Attorney for Plaintiff